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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,453	10/04/2004	Naoto Ishii	G0126.0233	2436
32172	7590	07/13/2006		
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP 1177 AVENUE OF THE AMERICAS (6TH AVENUE) 41 ST FL. NEW YORK, NY 10036-2714			EXAMINER MARSH, OLIVIA MARIE	
			ART UNIT 2617	PAPER NUMBER

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/510,453	ISHII ET AL.
	Examiner Olivia Marsh	Art Unit 2617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 October 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-28, 59 and 60 is/are pending in the application.  
 4a) Of the above claim(s) 29-58 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4, 8-14, 18-25, 59 and 60 is/are rejected.  
 7) Claim(s) 5-7, 15-17 and 26-28 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_ .  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. **Claims 1-4, 8-9, 11-14, 18-19, 21-25, and 59-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Hamabe (U.S. 6,879,831 B2).**

The applied reference has a common Assignee and Inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

As to claim 1, Hamabe discloses:

A mobile communication system that uses an adaptive antenna in a base station (2-1, 2-2) and carries out downlink data transmission to a mobile station (column 1, lines 10-15), said mobile communication system characterized in that

    said mobile station (1) comprises means (14) for estimating a communication path quality by switching between a downlink common pilot channel (CPICH) transmitted with a first directivity and a downlink dedicated control channel (DPCH) transmitted with a second directivity, and means for notifying an estimation result thereof to said base station (column 7, lines 44-50, 52-52), and

    said base station comprises means for performing a communication control based on said communication path quality (column 7, lines 63-65).

As to claim 11, Hamabe discloses:

A mobile station (1) to which downlink data transmission is carried out from a base station (2-1, 2-2) using an adaptive antenna (column 1, lines 10-15), said mobile station (1) characterized by comprising means (14) for estimating a communication path quality by switching between a downlink common pilot channel (CPICH) transmitted with a first directivity and a downlink dedicated control channel (DPCH) transmitted with a second directivity (column 7, lines 44-50, 52-52).

As to claim 18, Hamabe discloses:

A base station (2-1, 2-2) that carries out downlink data transmission to a mobile station (1) by the use of an adaptive antenna (column 1, lines 10-15), said base station characterized by comprising means for performing a communication

control based on a result of estimation of a communication path quality from said mobile station, said estimation carried out by switching between a downlink common pilot channel (CPICH) transmitted with a first directivity and a downlink dedicated control channel (DPCH) transmitted with a second directivity (**column 7, lines 44-50, 52-52**).

As to **claim 22**, Hamabe discloses:

A communication path quality estimation method of a mobile communication system that uses an adaptive antenna in a base station and carries out downlink data transmission to a mobile station (**column 1, lines 10-15**), said communication path quality estimation method characterized in that a step of estimating a communication path quality by switching between a downlink common pilot channel (CPICH) transmitted with a first directivity and a downlink dedicated control channel (DPCH) transmitted with a second directivity, and a step of notifying an estimation result thereof to said base station are provided in said mobile station (**column 7, lines 44-50, 52-52**).

As to **claims 2, 12, and 23**, Hamabe discloses everything as applied in claims 1, 11, and 22 and Hamabe also discloses:

said mobile station uses, for estimating said communication path quality (**column 7, lines 44-50**), said downlink common pilot channel while waiting for data reception and said downlink dedicated control channel while receiving data (**column 7, lines 52-62**).

As to **claims 3, 13, and 24**, Hamabe discloses everything as applied in claims 1-2, 11-12, and 22-23 and Hamabe also discloses:

mobile station uses said downlink common pilot channel for estimating said communication path quality after a predetermined time set in advance has elapsed from completion of said data reception (**column 9, lines 60-64**).

As to **claims 4, 14, and 25**, Hamabe discloses everything as applied in claims 1, 11, and 22 and Hamabe also discloses:

mobile station uses a value estimated by the use of said downlink dedicated control channel in estimation of said communication path quality until a predetermined time set in advance has elapsed from a last transmission (**column 9, lines 60-64**).

As to **claims 8 and 19**, Hamabe discloses everything as applied in claims 1 and 18 and Hamabe also discloses:

said base station carries out selection of a transmission mode as said communication control (**column 10, lines 45-48**).

As to **claims 9 and 21**, Hamabe discloses everything as applied in claims 1 and 18 and Hamabe also discloses:

said base station carries out scheduling as said communication control (**column 4, lines 12-15; column 5, lines 20-22**).

As to **claims 10 and 20**, Hamabe discloses everything as applied in claims 1 and 18 and Hamabe also discloses:

the selection of said transmission mode is selection of any of a modulation system, a coding system, and a spreading rate (**column 10, lines 45-48**).

As to **claim 59**, Hamabe discloses everything as applied in claim 22 and Hamabe also discloses:

said communication path quality is used for selecting a communication mode  
**(column 10, lines 6-12).**

As to **claim 60**, Hamabe discloses everything as applied in claim 22 and Hamabe also discloses:

    said communication path quality is used for scheduling **(column 10, lines 20-27;**  
**column 4, lines 12-15).**

***Allowable Subject Matter***

4.    Claims 5-7, 15-17, and 26-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olivia Marsh whose telephone number is 571-272-7912. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 571-272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CHARLES APPIAH  
PRIMARY EXAMINER